IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WA.No. 932 of 2007()

AGAINST THE JUDGEMENT IN WPC.30591/2006
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APPELLANTS: PETITIONER IN WPC
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1. T.K.M. HUSSAIN,
KARUMAKKATTE, KUMARAPURAM P.O.,
ERNAKULAM DISTRICT.

2. K.I. ABOOBACKER,
PROPRIETOR, IBSON INDUSTRIES, PERINGALA P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.M.A.FIROZ

RESPONDENTS: RESPONDENTS IN WPC
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1. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO GOVERNMENT (TAXES) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
OFFICE OF THE COMMISSIONER, THIRUVANANTHAPURAM.

3. THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, ARYANKAVU.

4. THE DIRECTOR,
KERALA KHADI & VILLAGE, INDUSTRIES BOARD,
THIRUVANANTHAPURAM.

BY SPL.GOVT.PLEADER (TAXES) SRI V.VASHOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.932 of 2007

Dated, this the 1st day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

Petitioners are engaged in the manufacture of splints and veneers. They have registered themselves as dealers under the provisions of Kerala General Sales Tax Act and also the Central Sales Tax Act. Their small scale manufacturing units are recognised by the Kerala Khadi and Village Industries Board. According to them, since their products viz. splints and veneers are exempted from payment of Kerala Value Added Tax (for short, KVAT Act), they are entitled to total exemption from payment of tax under the Central Sales Tax Act (for short, the CST Act) in view of Section 8(2)(c) of the Act. Therefore they are before this court for the following reliefs:

(a) to declare that the 21 items mentioned in entry 55 of the First Schedule to the KVAT Act are not liable to the tax under the CST Act in view of sec.8(2)(c) of the CST Act.

(b) to declare that the instructions issued by the Commissioner of Commercial Taxes in Circular No.17/2006 dated 19.4.2006 is bad in law, and

(c) for a direction to respondents Nos.1 to 3 not to detain the vehicles of the petitioner under sec.47(2) of the KVAT Act.

2. Learned counsel appearing for the petitioners/appellants would submit that the items which they are dealing would fall under sub-clause 13 of entry 55 of the First Schedule of the KVAT Act and the commodity falling under that entry is totally exempt

from payment of tax under the KVAT Act and therefore they are entitled to take benefit under sec.8(2)(c) of the CST Act. However, according to the learned counsel, that in view of the circular instruction issued by the Commissioner of Commercial Taxes in No.17/2006 dt. 19.4.2006, they would not be in a position to put forth their views before the assessing authority, since, the assessing authority is bound by the clarifications/circular instructions issued by the Commissioner for Commercial Taxes.

3. Shri Ashokan, learned Special Government Pleader (Taxes) submits that entry 55 of the First Schedule to KVAT Act is a conditional exemption granted by the legislature to the products notified by the Khadi and Village Industries Commissioner at the sale point by the manufacturing units recognised by Kerala Khadi and Village Industries Board. Since it is a conditional exemption, the assessee cannot take benefit under section 8(2)(c) of the CST Act.

4. To answer the issues canvassed. sub-section (4) of Section 6 of the Act, the Entry 55 of First Schedule to the Act and Section 8(2)(c) of Central Act requires to be extracted. They are:-

Section 6(4):-

"Goods specified in the First Schedule shall be exempted from tax"

Entry 55 of First Schedule:-

"Products notified by the Khadi and Village Industries Commission at the point of sale by the manufacturing units approved by the Kerala Khadi and Village Industries Board.

(1) Fireworks and agarbathies
(2) Handmade soaps
(3) Tanned hides and skins and ancillary industries connected with the same
(4) Handmade leather goods
(5) Handmade paper
(6) Cane gur4 and khandasari

(7) Manure and methane gas from cowdung and other waste products
(8) Lime products
(9) Shellac
(10) Vegetable and fruit products
(11) Bamboo and cane goods
(12) Products of blacksmithy other than furniture
(13) Carpentry other than manufacture of furniture
(14) Fibre products other than coir
(15) Household utensils in aluminium
(16) Maize and ragi products
(17) Dipped rubber latex products such as rubber band, surgical gloves and baloons
(18) Palm products
(19) Pottery
(20) Honey
(21) Ghani oil.**"**

Section 8(2)(c) of the CST Act:

> "In the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be nil, and for the purpose of making any such calculation under clause (a) or clause (b), any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.
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> **Explanation.**- For the purpose of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the Sales Tax law of the appropriate State, if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified sages or otherwise than with reference to the turnover of the goods."

5. Section 6(4) of the Act envisages that the goods specified in the First Schedule to the Act is exempted from payment of tax. Entry 55 of the First Schedule enumerates that goods notified by the Khadi and Village Industries Commission eligible

for exemption from payment of tax, the point at which they are eligible for such exemption and lastly the manufacturing unit which are exempt from payment of tax. It specifically says that exemption is at sale point by those manufacturing units which are approved by the Kerala Khadi and Village Industries Board. The entry enumerates 21 items/commodities which are eligible for such exemption, one such item is carpentry other than manufacture of furniture.

6. The specific case of the petitioner and its learned counsel is that their business activities would fall under sub-clause 13 of Entry 55 of First Schedule to the Act and according to them what the said entry provides is general exemption from payment of tax under the Act and therefore, sales of any goods which are exempt from tax generally under the State law attract the nil rate of tax under the provisions of Central Sales Tax Act.

7. Section 8(2)(c) of the Act read with explanation appended thereto gives statutory exemption or concession under this section. Sale of any goods which are exempt from tax generally under the State law attract the nil rate of tax under the Central Sales Tax Act and the explanation excludes from the general exemption goods which are only in special circumstances or conditions etc. The explanation makes it clear that for the purpose of the Section, the goods shall not be deemed to be exempt from tax generally under the sales tax of the State, if under the Sales Tax Act of the State, such sale or purchase of the goods is exempt only under specified circumstances or special conditions.

Under Entry 55 of the First Schedule to the Act, the exemption is not with reference to the goods, but with reference to manufacturing units approved by the Kerala Khadi and Village Industries Board. Thus the exemption provided under the

State law is under specified circumstances and special conditions. Therefore, it is not a general exemption, but exemption under certain circumstances.

8. The next question that was canvassed before us is that the Commissioner of Sales Tax under KVAT Act could not have issued any circular instruction for the purpose of the CST Act. In support of that contention learned counsel for the petitioners/appellants takes us through sub-section (5) of section 8 of the CST Act and accordingly contends that the circular instruction issued by the Commissioner requires to be annulled by this court.

9. Sub-section (5) of section 8 of the CST Act speaks of granting of exemption by the State Government by issuing an appropriate notification. This has nothing to do with the interpretation of the transaction. If, for any reason, the State is interested in granting any exemption to goods or to a transaction, the same can be done by issuing an appropriate notification as provided under sub-section (5) of section 8 of the CST Act.

10. Section 9 of the CST Act provides for levy and collection of tax and penalties. The Central Government has entrusted the powers with the State authorities to assess, re-assess tax, levy penalties, deal with the appeals and other remedies, recover tax as finally determined etc. and carry out all other functions necessary in these matters. The provisions in the State law in the matters listed in sub-clause (2) applicable to the assessments under this Act, are not exhaustive in view of the use of the words "including the provisions relating to in this sub-section and hence other powers not mentioned herein will also be available to the authorities.

11. The State has empowered the Commissioner to issue appropriate circulars

to maintain uniformity in the procedure for the purpose of quantification of tax and also in the procedure for levying tax on certain transactions. By virtue of the powers given to the State authorities under sub-section (2) of section 9 of the CST Act, the Commissioner, in exercise of his powers, has issued the circular dated 19.4.2006. In view of the above, we are of the opinion that the Commissioner is empowered under the CST Act to issue such circular.

12. In view of the above, we do not see any merit in the contentions canvassed by the learned counsel for the assessee.

13. Accordingly, the appeal requires to be rejected and it is rejected. In the facts and circumstances of the cases, parties are directed to bear their own costs. Ordered accordingly.

Sd/-
H.L. DATTU,
Chief Justice

Sd/-
K.T. SANKARAN,
Judge

mt/DK